

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
PEDRO HERNANDEZ,

Index No.:

Date Filed:

Plaintiff,

SUMMONS

-against-

CITY OF NEW YORK, DETECTIVE
DAVID TERRELL, DETECTIVE DANIEL BRADY and
"JOHN DOE" POLICE OFFICERS 1-10

Plaintiff designates Bronx
County as the place of trial. The
basis of the venue is locus of
occurrence: County of Bronx.

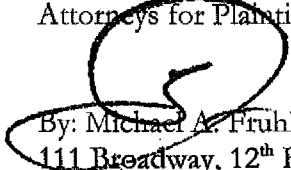
Defendants.
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To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the state of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
November 29, 2018

GERSONWITZ LIBO & KOREK, P.C.
Attorneys for Plaintiff


By: Michael A. Fruhling
111 Broadway, 12th Floor
New York, New York 10006
(212) 385-4410

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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PEDRO HERNANDEZ,

Plaintiff,

-against-

CITY OF NEW YORK, DETECTIVE
DAVID TERRELL, DETECTIVE DANIEL BRADY
and "JOHN DOE" POLICE OFFICERS 1-10,

Defendants.
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VERIFIED COMPLAINT

Plaintiff, PEDRO HERNANDEZ, by his attorneys GERSOWITZ, LIBO & KOREK, P.C.,
as for his Verified Complaint, alleges the following, upon information and belief:

PARTIES

1. At all times hereinafter mentioned, Defendant, CITY OF NEW YORK, was and still
is a municipal corporation duly organized and existing under the laws of the State of New York.

2. At all times hereinafter mentioned, Defendant, CITY OF NEW YORK, its agents,
servants and employees operate, maintained and controlled the Police Department of CITY of New
York, including all police officers and detectives thereof.

3. At all times hereinafter mentioned, on July 14, 2016, Defendant DETECTIVE
DAVID TERRELL ("TERRELL") was employed by Defendant, CITY OF NEW YORK, as a police
officer.

4. At all times hereinafter mentioned, on July 14, 2016, Defendant DETECTIVE
DAVID TERRELL ("TERRELL") was employed by Defendant, CITY OF NEW YORK, as a
detective.

5. At all times hereinafter mention, Defendant TERRELL was acting within the scope
of his employment as a police officer with CITY OF NEW YORK.

6. At all times hereinafter mentioned, on July 14, 2016, Defendant DETECTIVE DANIEL BRADY ("BRADY") was employed by Defendant, CITY OF NEW YORK, as a police officer.

7. At all times hereinafter mentioned, on July 14, 2016, Defendant DETECTIVE DANIEL BRADY ("BRADY") was employed by Defendant, CITY OF NEW YORK, as a detective.

8. At all times hereinafter mention, Defendant BRADY was acting within the scope of his employment as a police officer with Defendant, CITY OF NEW YORK.

9. At all times hereinafter mentioned, Defendants JOHN DOE POLICES OFFICERS 1-10 were officers assigned to the 42nd Precinct.

10. At all times hereinafter mentioned, Defendants JOHN DOE POLICES OFFICERS 1-10, were employees of Defendant, CITY OF NEW YORK

11. At all times hereinafter mentioned, Defendant, CITY OF NEW YORK, has established and maintains a Department of Police as a constituent department or agency of the defendant.

12. Defendant, CITY OF NEW YORK, is and was at all times relevant herein a Municipal entity created and authorized under the laws of the State of New York. It is authorized to maintain a police department, which acts as its agent in the area of law enforcement and for which it is ultimately responsible. Defendant, CITY OF NEW YORK, assumes the risks incidental to the maintenance of a police force and the employment of police officers as said risk attaches to the public consumers of the services provided by The New York City Police Department.

13. At all times hereinafter mentioned Defendant, CITY OF NEW YORK, employed Defendants, TERRELL and BRADY.

14. At all relevant times, the individual defendants were acting pursuant to their authority as NEW YORK CITY POLICE DEPARTMENT employees. Notwithstanding their

unconstitutional and unlawful conduct, the actions of the individual defendants were taken in the course of their duties and were incidental to their otherwise lawful function as agents, servants and employees of the New York City Police Department.

15. The plaintiff, PEDRO HERNANDEZ ("HERNANDEZ") was, on July 14, 2016, and at all relevant times, a resident of the County of Bronx, City and State of New York.

16. At all relevant times, on July 14, 2016, Plaintiff HERNANDEZ was a minor.

17. At all relevant times, on September 6, 2017, Plaintiff HERNANDEZ was a minor.

CONDITIONS PRECEDENT

18. On or about December 5, 2017, and within ninety (90) days of the occurrence complained of hereinafter, Plaintiff HERNANDEZ duly served a Notice of Claim upon CITY of New York in the manner and mode required by law.

19. On or about December 5, 2017, and within ninety (90) days of the occurrence complained of hereinafter, Plaintiff HERNANDEZ duly served a Notice of Claim upon Defendants herein in the manner and mode required by law.

20. That at least thirty (30) days have elapsed since the service of the claim prior to the commencement of this action and adjustment of payment thereof has been neglected or refused, and this action has been commenced within one year and ninety (90) days after the happening of the event upon which the claims are based.

21. On November 19, 2018, Plaintiff HERNANDEZ appeared at the request of the municipal Defendants for an oral examination pursuant to Section 50-h of the General Municipal Law and/or the Public Authorities Law.

22. That the statute of limitations has been tolled as a result of the infant's minority.

23. That the within action is commenced within one year of the age of majority of the Plaintiff HERNANDEZ.

JURISDICTION AND VENUE

24. The Plaintiff brings this action in the Supreme Court, State of New York, County of Bronx, because the plaintiff has been injured for a sum that exceeds the jurisdiction of all lower courts.

25. The Plaintiff properly designates Bronx County as the place of trial. The basis of the venue is the locus of the occurrence

STATEMENT OF FACTS

26. On or about September 1, 2015, a shooting occurred involving Shawn Nardoni, an infant under the age of 18 years of age, in the County of Bronx, City and State of New York.

27. On or about that day, Plaintiff HERNANDEZ was a lawful resident of the County of Bronx, City and State of New York.

28. On or about September 1, 2015, Plaintiff HERNANDEZ was not in the vicinity of the shooting of Shawn Nardoni.

29. On or about September 1, 2015, Police Officers and Detectives from the 42nd Precinct began to investigate the above referenced shooting.

30. On or about September 1, 2015, Defendants TERRELL and BRADY, also from the 42nd Precinct, began to investigate the above referenced shooting.

31. Upon information and belief, evidence showed that plaintiff was not the perpetrator of the shooting.

32. Upon information and belief, Defendants were in possession of evidence at the commencement of their investigation demonstrating that Plaintiff HERNANDEZ was not the shooter.

33. Defendants interviewed witnesses and the victim of the shooting, who informed them that they were unable to identify the shooter.

34. Upon information and belief, Defendants coerced and intimidated witnesses to identify Plaintiff HERNANDEZ as the shooter.

35. On or about July 14, 2016, Plaintiff HERNANDEZ was arrested for the shooting of Shawn Nardoni.

36. Upon information and belief, that despite evidence that Plaintiff HERNANDEZ was not the perpetrator of the crime, he was still arrested on July 14, 2016 and charged with felony assault.

37. On or about July 14, 2016, Plaintiff HERNANDEZ was booked on charges of related to the shooting that occurred on September 1, 2015.

38. On or about July 14, 2016, Plaintiff HERNANDEZ was booked on Felony Assault related to the shooting that occurred on September 1, 2015.

39. Plaintiff HERNANDEZ was processed at the 42nd Precinct and then taken to Central Booking where he was arraigned and then remanded.

40. Plaintiff HERNANDEZ was imprisoned from July 14, 2016 through September 6, 2017.

41. Plaintiff HERNANDEZ was imprisoned at Rikers Island Correctional Facility.

42. On September 6, 2017, the charges against Plaintiff HERNANDEZ were dismissed by the Bronx County District Attorney's Office.

43. That without justification or provocation and without a warrant, Defendants, CITY OF NEW YORK, TERRELL and BRADY, assaulted, accosted, battered, arrested, confined, unduly restrained, falsely arrested, falsely imprisoned and wrongfully prosecuted plaintiff HERNANDEZ.

44. Defendants, their agents, servants and employees maliciously prosecuted the Plaintiff HERNANDEZ.

AS AND FOR A FIRST CAUSE OF ACTION

45. Plaintiff repeats, realleges and reiterates the allegations in paragraphs "1" through "42," inclusive, as though each were set forth at length herein.

46. On or about July 14, 2016, and thereafter, in CITY of New York, the Defendants, their agents, servants and/or employees wrongfully arrested, imprisoned, detained, assaulted and battered Plaintiff HERNANDEZ, without any right or grounds thereof

47. Plaintiff HERNANDEZ was detained, arrested, imprisoned, assaulted and battered by the Defendants, their agents, servants and/or employees without probable cause and/or justification.

48. Defendants, through their agents, servants and/or employees, acted in bad faith in committing the aforementioned the arrest, detention, imprisonment, assault and battery of Plaintiff HERNANDEZ.

49. Defendants, their agents, servants and/or employees, intended to confine the Plaintiff HERNANDEZ, in that Plaintiff was conscious of the confinement; plaintiff did not consent to the confinement; and that the confinement was not privileged.

50. At the time of his unlawful arrest, detention and imprisonment, Plaintiff HERNANDEZ, had not committed or attempted to commit any illegal act or crime.

51. At the time of Plaintiff HERNANDEZ's unlawful arrest, Defendants knew or should have known, through the exercise of proper police procedure and reasonable investigation, that the aforementioned arrest and detention were false and without probable cause.

52. That said false arrest and false imprisonment caused Plaintiff HERNANDEZ to suffer emotional and psychological distress, anguish, anxiety, fear, humiliation, loss of freedom and damage to his reputation.

53. Defendants placed Plaintiff HERNANDEZ under arrest, and falsely charged him with assault and criminal possession of a weapon. Defendants further acted maliciously by falsely testifying against the plaintiff.

54. It is alleged that Defendants CITY OF NEW YORK, TERRELL and BRADY, their agents, servants and employees, failed to investigate the facts, and therefore maliciously and intentionally detained, falsely detained, falsely imprisoned, and humiliated Plaintiff HERNANDEZ.

55. Upon information and belief, plaintiff HERNANDEZ was released from custody and all criminal charges were dismissed on September 6, 2017.

56. Upon information and belief, plaintiff HERNANDEZ was released from custody and all criminal charges were dismissed on September 6, 2017, after Plaintiff's criminal defense attorney brought the malfeasance of the investigating NYPD officers and detectives to light.

57. Upon information and belief, plaintiff HERNANDEZ was released from custody and all criminal charges were dismissed on September 6, 2017 when Plaintiff's criminal defense attorney brought out that there was no evidence to arrest, detain or prosecute Plaintiff HERNANDEZ.

58. As a result of the above Defendants' actions, Plaintiff HERNANDEZ, suffered and continues to suffer severe mental anguish, humiliation, shame, emotional distress and change to reputation, some or all of which may be permanent.

59. Plaintiff HERNANDEZ, suffered – and continues to suffer – greatly and was and is physically and emotionally traumatized by this excessive detention and imprisonment.

60. The false criminal arrest and wrongful imprisonment of Plaintiff HERNANDEZ, because of Defendants' knowledge of lack of any legitimate cause or justification, were intentional, malicious, reckless, and in bad faith.

61. As a result of the foregoing, Plaintiff HERNANDEZ, demands judgment against Defendants, CITY OF NEW YORK, TERRELL and BRADY, in a sum of money which exceeds the jurisdictional limits of all courts of lesser jurisdiction

AS AND FOR A SECOND CAUSE OF ACTION

62. Plaintiff repeats, realleges and reiterates the allegations contained in paragraphs "1" through "61," inclusive, as though each were set forth fully at length herein.

63. Defendant, CITY OF NEW YORK, hired and retained in its employ Police Officers, including defendants TERRELL and BRADY, with knowledge that said police officer lacked the experience to be employed by the aforementioned defendant, and therefor, were unfit to be a police officer.

64. Defendant, CITY OF NEW YORK, hired and retained in its employ Police Officers, including defendants TERRELL and BRADY, with knowledge that said police officers lacked the department to be employed by the aforementioned defendant, and were, therefore, unfit to be police officers.

65. Defendant, CITY OF NEW YORK, hired and retained in its employ Police Officers, including defendants TERRELL and BRADY with knowledge that said police officers lacked the experience to be employed by the aforementioned defendant, and therefore, were unfit to be police officers.

66. Defendant, CITY OF NEW YORK, hired and retained in its employ Police Officers, including Defendants, TERRELL and BRADY, with knowledge that said police officers had vicious propensities and were therefore unfit to be police officers.

67. As a result of the foregoing, Plaintiff HERNANDEZ, has suffered serious and severe emotional distress, personal injuries and loss to his reputation.

68. As a result of the foregoing, Plaintiff HERNANDEZ, demands judgment against defendants, CITY OF NEW YORK and TERRELL in a sum of money which exceeds the jurisdictional limits of all courts of lesser jurisdiction.

AS AND FOR A THIRD CAUSE OF ACTION

69. Plaintiff repeats, realleges and reiterates the allegations contained in paragraphs "1" through "68," inclusive, as though each were set forth at length herein.

70. On July 14, 2016, defendant, CITY OF NEW YORK, through its agents, servants and/or employees, did maliciously cause a criminal prosecution to be commenced against Plaintiff HERNANDEZ, by filing an accusatory instrument, without probable cause and in bad faith.

71. Plaintiff had not committed any illegal acts.

72. Plaintiff had not given Defendants, their agents, servants and/or employees probable cause to believe that he had committed the illegal acts hereinafter complained of.

73. Defendants knew or should have known through the exercise of reasonable care and proper police procedure that said investigation was flawed or incomplete.

74. As a result of the foregoing malicious prosecution, Plaintiff HERNANDEZ, suffered and continues to suffer, substantial and permanent damages.

75. Said malicious prosecution cause Plaintiff HERNANDEZ to sustain severe emotional distress, emotional disturbances, humiliation and damage to his reputation, including the stigma of having a criminal record.

76. As a result of the foregoing, Plaintiff HERNANDEZ, demands judgment against Defendants CITY OF NEW YORK, TERRELL and BRADY, in a sum of money which exceeds the jurisdictional limits of all courts of lesser jurisdiction.

AS AND FOR A FOURTH CAUSE OF ACTION

77. Plaintiff repeats, realleges and reiterates the allegations contained in paragraphs "1" through "84," inclusive, as though each were set forth fully at length herein.

78. Defendants, their agents, servants and/or employees negligently, carelessly and recklessly performed their police duties in that they failed to exercise such care in the performance of their police duties as a reasonably prudent police officer would have used under similar circumstances.

79. That the aforementioned occurrences, to wit: the false arrest, detainment, unlawful arrest, unlawful and false imprisonment of Plaintiff HERNANDEZ; the assault and battery committed by defendants against Plaintiff HERNANDEZ; the malicious prosecution of Plaintiff HERNANDEZ; and the resulting injuries to the mind and body therefrom; were caused solely by reason of the negligence of the defendants, their agents, servants and/or employees, without any negligence on the part of the Plaintiff HERNANDEZ.

80. As a result of the foregoing, Plaintiff HERNANDEZ, demands judgment against defendants CITY OF NEW YORK, TERRELL and BRADY, in a sum of money which exceeds the jurisdictional limits of all courts of lesser jurisdiction

AS AND FOR A FIFTH CAUSE OF ACTION

81. Plaintiff repeats, realleges and reiterates the allegations contained in paragraphs "1" through 80," inclusive, as though each were set forth fully at length herein.

82. Defendants' conduct towards Plaintiff, was so outrageous and shocking that it exceeded all reasonable bounds of decency tolerated by the average member of the community.

83. Defendants' acted with the desire to cause Plaintiff HERNANDEZ, mental distress and physical distress and pain or acted under circumstances known to them which made it substantially certain that they would cause such mental and physical distress.

84. Defendants acted with utter and reckless disregard of the consequences of their actions.

85. As a result of the foregoing, Plaintiff HERNANDEZ, has sustained severe and debilitating physical, emotional, and psychological distress, anguish, anxiety, fear, humiliation, and soreness.

86. As a result of the foregoing, Plaintiff HERNANDEZ, demands judgment against defendants CITY OF NEW YORK, TERRELL and BRADY in a sum of money which exceeds the jurisdictional limits of all courts of lesser jurisdiction.

THE ITEMS OF DAMAGE OR INJURIES CLAIMED

87. That by reason of the foregoing, Plaintiff HERNANDEZ, was severely injured and damaged, sustained personal injuries, bruises, contusions, trauma, mental distress and other injuries; Plaintiff was rendered sick, sore, lame and disabled, sustained severe nervous shock and mental anguish, great physical pain and emotional upset, some of which injuries are permanent in nature and duration, and plaintiff will be permanently caused to suffer pain, inconvenience, and other effects of such injuries, and Plaintiff has suffered and in the future will necessarily suffer additional loss of time and earnings from employment; and plaintiff will be unable to pursue the usual duties with the same degree of efficiency as prior to this occurrence, all to plaintiff's great damage.

88. Plaintiff HERNANDEZ suffered a deprivation of his liberty, was falsely arrested, falsely imprisoned, the use of excessive and unnecessary force was used against him, beaten, battered, assaulted, humiliated, embarrassed, unlawfully detained, suffered emotional harm, shock, was falsely imprisoned, loss of reputation in the community, loss of self-esteem, fear and anxiety as a result of this incident.

89. Plaintiff was deprived of his freedom.

90. Plaintiff was assaulted while he was detained by other prisoners and guards.

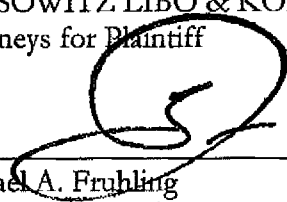
91. Plaintiff HERNANDEZ, was caused to be injured, and to undergo pain and suffering as a result of the aforementioned willful, wanton and deliberate indifference on the part of defendants.

92. As a result of the aforesaid, Plaintiff HERNANDEZ, was damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, Plaintiff, PEDRO HERNANDEZ, respectfully demands judgment against defendants, CITY OF NEW YORK, DETECTIVE DAVID TERRELL DETECTIVE DANIEL BRADY, and request the following relief: compensatory and punitive damages in a sum of money which exceeds the jurisdictional limits of all courts of lesser jurisdiction; an award of reasonable attorney's fee, costs and disbursements of this action; such other and further relief as this Court may deem just, fair and proper under the circumstances.

Dated: New York, New York
November 29, 2018

Yours, etc.
GERSOWITZ LIBO & KOREK, P.C.
Attorneys for Plaintiff



Michael A. Fruhling
111 Broadway, 12th Floor
New York, New York 10006
(212) 385-4410

VERIFICATION BY AFFIRMATION

Michael A. Fruhling, an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am a member of GERSOWITZ, LIBO & KOREK, P.C., attorneys of record for plaintiff. I have read the annexed


COMPLAINT

and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my files.

The reason I make the foregoing affirmation instead of the plaintiff is because plaintiff resides outside of the county wherein your affirmant maintains offices.

Dated: New York, New York
November 29, 2018

By:



Michael A. Fruhling

Index No.
 SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF BRONX

Year 20

PEDRO HERNANDEZ,

Plaintiff(s),

-against-

CITY OF NEW YORK, DETECTIVE DAVID TERRELL, DETECTIVE DANIEL BRADY and
 "JOHN DOE" POLICE OFFICERS 1-10,

Defendant(s).

SUMMONS AND VERIFIED COMPLAINT

GERSOWITZ LIBO & KOREK, P.C.

Attorneys for Plaintiff(s)

Office and Post Office Address-Telephone

111 BROADWAY - 12TH FLOOR

NEW YORK, N.Y. 10006

(212) 385-4410

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

NOTICE OF ENTRY

Sir: Please take notice that the within is a (*certified*) true
 copy of a
 duly entered in the office of the clerk of the within named
 court on 20

Dated,

Yours, etc.,

GERSOWITZ LIBO & KOREK, P.C.

Attorneys for

NOTICE OF SETTLEMENT

Sir: Please take notice that an order

of which the within is a true copy will be presented for
 settlement to the Hon.

one of the judges of the within named Court, at

on

at

M.

20

15 of 15
 Dated,

Yours, etc.